

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS O. POTTS and DEPARTMENT OF DEFENSE,
DEFENSE INTELLIGENCE AGENCY, Washington, DC

*Docket No. 00-1113; Submitted on the Record;
Issued February 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on January 14, 1999.

On January 14, 1999 appellant, then a 53-year-old program manager, filed a claim for "physical and psychological trauma as a result of EEO [Equal Employment Opportunity] case interrogation." In a February 17, 1999 statement, appellant contended that the January 14, 1999 interrogation was a condition of his employment and a job-related duty and that he did not attend this interrogation willingly but as an employee and an official witness answering allegations of discrimination.

Appellant submitted a copy of an undated memorandum from the employing establishment advising him of a discrimination complaint for which he had been identified as a witness, and that he was scheduled to testify on January 14, 1999. The information sheet attached to the employing establishment's memorandum to appellant stated that the person conducting an EEO investigation was authorized to "require employees of the agency having any knowledge of the matter complained to furnish testimony...." The information sheet then stated: "From the above, it can be seen that testifying as a witness in an EEO investigation is a part of your job as a federal employee." In response to the employing establishment's memorandum, appellant sent an e-mail to its author on January 5, 1999 stating that because his last encounter with an investigator appointed by the employing establishment "went especially bad" and his attempts to register a complaint were refused, he was "most apprehensive about this proposed meeting, but acknowledge that your letter makes it clear that I have no choice but to attend." Another e-mail sent by appellant on January 8, 1999 requested that he be excused from the scheduled interrogation and from any further involvement in any EEO case.

In a February 17, 1999 statement, appellant stated that he did not receive any response to his requests that he be excused from participating in the EEO investigation and that he experienced severe anxiety for a week before the January 14, 1999 interview. He continued that at the January 14, 1999 interview he "pointed to specific examples of practices, witnesses and

documents, which proved the allegations false,” but that he felt helpless because he knew the employing establishment would settle the charges and that the managers would be “branded falsely as racists and bigots.” Appellant stated that he broke down during the interview, excused himself and went to the men’s room where he sobbed for 5 or 10 minutes, returned to the interview and cried through much of the rest of it but managed to answer every question.

In a January 20, 1999 statement, the EEO investigator stated that appellant, who was a management witness, entered the interview room appearing extremely upset and stressed, that the interview lasted about one hour and that appellant clutched his chest and had difficulty breathing.

By decision dated March 25, 1999, the Office of Workers’ Compensation Programs found that appellant’s reaction to an EEO interrogation was not considered to be in the performance of duty.

Appellant requested a hearing, which was held before an Office hearing representative on July 29, 1999. Appellant testified that he was listed in the EEO complaint as one of many allegedly discriminating management officials, that the allegation in the complaint was that management suppressed the availability of training with the intent of denying promotion opportunities, that he was never provided with official documentation of the actual complaint, that he had no knowledge of the resolution of the complaint and that no action was taken against him on any of the charges.

By decision dated October 26, 1999, an Office hearing representative found that investigations were an administrative function of the employing establishment, not a duty of the employee, and that appellant had not established error or abuse in being required to submit to the January 14, 1999 interview or in the conduct of this interview.

The Board finds that appellant has established a compensable factor of employment: the requirement that he be interviewed with regard to an EEO complaint.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.¹

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

Investigations are considered an administrative function of the employer, when they are not related to an employee's day-to-day duties or specially assigned duties or to a requirement of the employee's employment.² The employing establishment retains the right to investigate an employee if wrongdoing is suspected or as part of the evaluation process.³ An employee's fear of being investigated is not covered under the Act.⁴

The circumstances in the present case do not merely involve a situation of a disabling emotional reaction to charges and an investigation of alleged irregularities in appellant's employment. The evidence establishes that appellant was required to undergo an interview with respect to an ongoing EEO investigation. As the Board stated in *Larry J. Thomas*: "As appellant was required to participate in the investigations, they were specially assigned tasks; an emotional condition arising from performance of the specially assigned task is compensable."⁵ In *Paul Raymond Kuyoth*,⁶ the Board indicated that an emotional reaction to charges and investigations of alleged irregularities in the employee's employment would not be covered under the Act; what brought the employee within coverage under the Act was that the employing establishment assigned him the task of preparing a response to the allegations and he had a disabling emotional reaction to the specially assigned task.

In the present case, appellant was required to participate in the EEO interview on January 14, 1999. The employing establishment's January 5, 1999 memorandum to appellant made it clear that appellant was required to undergo the January 14, 1999 interview and that this was "part of [his] job as a federal employee." While not all requirements of employment constitute employment factors,⁷ those that relate to the performance of duty are covered under the Act. The requirement that appellant participate in the EEO interview arose because of the allegation that he performed his regular duties, involving supervision, in a discriminatory manner. This establishes the nexus between the work appellant was hired to perform and the events to which he attributes his disability.⁸

As the Office found that appellant had not cited any compensable factors of employment, it did not develop or analyze the medical evidence. The case will be remanded to the Office for this purpose.

² *Jimmy B. Copeland*, 43 ECAB 339 (1991) (investigation into growing marijuana on the employing establishment's premises); *Mildred D. Thomas*, 42 ECAB 888 (1991) (investigation into the employee's behavior as a private taxpayer); *Wilbert Kimbrough*, 39 ECAB 425 (1988) (investigation into employee's alleged sexual harassment); *Manuel W. Vetti*, 33 ECAB 750 (1982) (investigation into postmaster's sale of land to the employing establishment).

³ *Sandra F. Powell*, 45 ECAB 877 (1994).

⁴ *Garry M. Carlo*, 47 ECAB 299 (1996).

⁵ 44 ECAB 291 at 300 (1992).

⁶ 27 ECAB 253 (1976).

⁷ *Anthony Zarcone*, 44 ECAB 751 (1993) (reporting of sick leave is required but not covered because not sufficiently related to duties the employee was hired to perform).

⁸ *Raymond H. Schulz, Jr.*, 23 ECAB 25 (1971).

The decision of the Office of Workers' Compensation Programs dated October 26, 1999 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
February 12, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member